

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

[Parent], on behalf of
[Student],¹

Petitioner,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: November 4, 2011

Hearing Officer: Jim Mortenson

2011 NOV -4 AM 11:29
DSSE
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION
Based on Motions for Summary Judgment and Dismissal

I. BACKGROUND

The complaint in this matter was filed by the Petitioner on October 4, 2011.

A response to the complaint was filed on October 14, 2011. A resolution meeting without the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint was held October 14, 2011, and the matter was not resolved. At the meeting the parties agreed that no resolution could be reached and that the hearing timeline would begin.

A prehearing conference was held on October 18, 2011, and a prehearing order issued on that date. The prehearing order was amended on October 19, 2011. At the prehearing conference the

¹ Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

parties and the Independent Hearing Officer (IHO) agreed that there appeared to be sufficient undisputed material facts to resolve this case without an evidentiary hearing. A motion schedule, as well as a possible hearing schedule, was set and this Hearing Officer Determination (HOD) results.

II. JURISDICTION

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5, Chap. 30.

III. MOTIONS FOR SUMMARY JUDGMENT & DISMISSAL

There are no rules under the Individuals with Disabilities Education Improvement Act (IDEA) or the District of Columbia Municipal Regulations for special education hearings dealing with summary judgment or dismissal. Hearing Officers do have the “authority and responsibility” to “take actions necessary to complete the hearing in an efficient and expeditious manner[.]” Student Hearing Office Standard Operating Procedure (SOP) § 600.1. Thus, to ensure the efficient and expeditious use of time and resources, this IHO adopts, as the parties were notified in the prehearing order, by analogy, Federal Rule of Civil Procedure 56(a) with regard to considering a motion for summary judgment.² Generally, summary judgment should be rendered for a movant if the pleadings and any affidavits or disclosed material show there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *See*, Fed. R. Civ. Pro. 56(a). The parties were also advised that SOP § 401(c) would be followed regarding motions except as modified in the prehearing order.

² The Respondent objected to the IHO adopting this rule.

The following schedule was applied for the motions:

- Petitioner's motion for summary judgment would be served and filed no later than 5:00 p.m. on Tuesday, October 25, 2011.
- The Respondent would file any opposition no later than 5:00 p.m. on Friday, October 28, 2011.
- Any additional reply would be filed no later than 5:00 p.m. on Tuesday, November 1, 2011.
- A determination would be issued on or before Friday, November 4, 2011.

On October 25, 2011, the Petitioner filed her motion for summary judgment. On the same day the Respondent filed a motion to dismiss the complaint. The Respondent filed an opposition to the Petitioner's motion for summary judgment on October 26, 2011. The Petitioner filed an opposition to the Respondent's motion to dismiss on October 28, 2011. The Petitioner filed a reply to the Respondent's opposition to the motion for summary judgment on November 1, 2011, and a Supplemental reply to the Respondent's opposition to the motion for summary judgment on November 2, 2011.

The HOD for this case is due November 28, 2011. This HOD is issued November 4, 2011.

IV. ISSUE, RELIEF SOUGHT, and DETERMINATION

The issue to be determined by the IHO is:

Whether the Respondent denied the Student a free appropriate public education (FAPE) when it failed to evaluate the Student within 120 days from the date she was referred for an evaluation because the eligibility team meeting was not timely convened?

The substantive requested relief is:

- (1) IEP team meeting to review assessment reports and make an eligibility determination.
- (2) An independently provided vocational II assessment.

8. On September 13, 2011, the Petitioner requested that a meeting be held sooner than the proposed dates.
9. On September 16, 2011, the parties agreed to meet on October 7, 2011.
10. On October 3, 2011, the Respondent cancelled the October 7, 2011, team meeting and advised the Petitioner, through Counsel, that it would have to be rescheduled with the Student's new school. Petitioner's Counsel objected to the cancelling of the meeting and scheduling it with the new school. The Special Education Coordinator at advised Petitioner's Counsel that she was "quite sure an Eligibility meeting can be scheduled with

VI. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. Federal regulations at 34 C.F.R. § 300.301(b) provide:

Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

District of Columbia law, at DC ST § 38-2561.02(a) implements this provision, in part, as follows:

DCPS shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.

2. A referral for an initial evaluation must be made in writing. D.C. Mun. Regs. tit. 5 § 3004.1(a).
3. While the Petitioner spoke to staff in January and April of 2011 about evaluating the Student, the first time anything was put in writing was when she filed a complaint on July 1, 2011.

120 days later was October 29, 2011, well after the complaint in this matter was filed. The Respondent was going to meet, then canceled the meeting as a result of the Student's transfer to a different school. The Respondent failed to reschedule the meeting, but before this could be worked out the present complaint was filed a day later. This should reasonably have led to the meeting the Petitioner was seeking, as the Respondent was obliged to "convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint[.]" 34 C.F.R. § 300.510(a). It didn't. The Petitioner, in her complaint, requested to waive the meeting, despite seeking a meeting. The Respondent did not agree to waive the meeting, and then failed to bring the requisite team members to the meeting who could resolve the matter by examining the evaluation data and making the determination about eligibility. The parties agreed to nothing but to start the 45 day hearing timeline. Fortunately, Counsel for the parties saw the opportunity to minimize the cost of litigation by agreeing to the material facts and requesting rulings in each of their clients' favor without an evidentiary hearing. Now, having examined these facts, it is clear that because the 120 day timeline had not yet run when the complaint was filed, and because the Respondent didn't comply with requirements for a proper resolution meeting, that litigation stopped the process and the 120 days has only recently expired. The Respondent cannot be found to have denied the Student a FAPE when the 120 days had not yet expired when the complaint was filed. However, the Respondent still has not convened the required eligibility meeting.

4. The meeting must be convened with qualified professionals, including individuals at the discretion of the Petitioner or the Respondent who have knowledge or special expertise

regarding the Student, and the Petitioner. 34 C.F.R. §§ 300.306(a), 300.321(a)(6).³ In interpreting evaluation data for the purpose of determining if the Student is a child with a disability and the educational needs of the Student, the Respondent must draw upon a variety of sources including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the Student's physical condition, social or cultural background, and adaptive behavior. The information obtained from all of these sources must be documented and carefully considered. 34 C.F.R. § 300.306(c)(1).

5. Reasonable attempts must be made, and documented, to obtain the participation of the parent in the eligibility meeting (it is not the parent's duty to convene the meeting). *See*, 34 C.F.R. §§ 300.322, 300.501(b)(1)(i). Even if the Petitioner refuses to attend a meeting, the Respondent must proceed to make the eligibility determination with the team members it is directly responsible for. *See*, 34 C.F.R. § 300.322(d), DC ST § 38-2561.02(a).
6. Because the Student has not yet been determined eligible for special education under IDEA, no additional relief is warranted.

VII. DECISION

The Petitioner's motion for summary judgment is granted in part and denied in part because at the time the complaint was filed the 120 day period had not yet expired, but it has now expired and the meeting has not been held. The Respondent's motion to dismiss is denied because it failed to timely convene the meeting to determine the Student's eligibility before the expiration of the 120 day period.

³ In the District of Columbia it is the IEP team that also makes the eligibility determination. *See*, D.C. Mun. Regs. tit. 5 § 3006.

VIII. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. Within 10 business days of the date of this order the Respondent must convene the eligibility meeting with qualified professionals, including individuals at the discretion of the Petitioner or the Respondent who have knowledge or special expertise regarding the Student, and the Petitioner.
2. In interpreting evaluation data for the purpose of determining if the Student is a child with a disability and the educational needs of the Student, the Respondent must draw upon a variety of sources including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the Student's physical condition, social or cultural background, and adaptive behavior.
3. The information obtained from all of these sources must be documented and carefully considered.
4. If the Petitioner does not take the opportunity to participate in the meeting, the Respondent must keep a record of its attempts to obtain the Petitioner's participation and shall proceed with the meeting to determine eligibility.

IT IS SO ORDERED.

Date: November 4, 2011



Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).